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COVER NOTE

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Delegations will find attached document COM(2023) 327 final.

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EUROPEAN
COMMISSION

Brussels, 14.6.2023
COM(2023) 327 final

Recommendation for a

COUNCIL DECISION

**authorising the opening of negotiations of an agreement with the United States of
America on strengthening international supply chains of critical minerals**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE RECOMMENDATION

1.1. Reasons for and objectives of the recommendation

On 16 August 2022, the United States of America (“US”) enacted the Inflation Reduction Act (“IRA”)¹, amending Section 30D of the United States Internal Revenue Code (the “Clean Vehicle Credit”). This became a subsidy for the purchase of qualifying battery or fuel cell operated vehicles in the form of a tax credit worth up to USD 7,500 per vehicle.

To qualify for the maximum amount of the subsidy, a vehicle must *inter alia* be equipped with a battery that has a minimum critical mineral content share of 40% (50% as of 2024, 60% as of 2025, 70% as of 2026, 80% as of 2027) being:

- (1) extracted and processed in the US or a country with which the US has a free trade agreement in force; or
- (2) recycled in North America.

The Clean Vehicle Credit is thus increasingly excluding EU-originating critical minerals and processed materials for automotive batteries from US supply chains. This is in contrast to imports of critical minerals and processed materials from US free trade agreement partners like Chile and Korea, or Japan with whom the US concluded a critical minerals agreement on 28 March 2023. This has a negative effect on the EU’s export possibilities to the US.

On 10 March 2023, President von der Leyen and President Biden therefore issued a joint statement indicating their intention to start negotiations on a targeted EU-US Critical Minerals Agreement (the “CMA”)² to ensure that minerals extracted or processed in the EU could be used in vehicles eligible for the Clean Vehicle Credit. The US has made clear that the conclusion of a CMA is needed to grant the EU equivalent status to US free trade agreement partners for the purpose of the Clean Vehicle Credit.

In 2022, the EU exported EUR 8.3 billion of relevant critical minerals to the US, representing 16.3% of total EU exports of these commodities.

In addition to addressing these issues under the IRA the EU and the US would, by concluding a CMA, also take a new step to deepen their broader economic relationship and help build sustainable and resilient international supply chains in sectors key to the respective net-zero transitions and security, including aerospace and defence.

The US forwarded a CMA proposal to the European Commission (the “Commission”) on 10 March. The Commission forwarded this proposal to the Council of the European Union (the “Council”) and European Parliament on 21 March 2023.

1.2. Consistency with existing policy provisions in the policy area

The negotiation and conclusion of a CMA is consistent with the EU’s overall trade policy as it would help to increase trade and investment between the EU and the US and reduce the risk of new trade tensions between the EU and US. This double objective is fully consistent with the Treaty on European Union (TEU), which states that the EU should encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade.³ It is also in line with the nature of the EU-US

¹ PL 117-169, H.R.5376 - Inflation Reduction Act of 2022.

² https://ec.europa.eu/commission/presscorner/detail/en/statement_23_1613

³ Article 21 paragraph 2 (e) TEU.

strategic partnership as reaffirmed in the last EU-US summit statement of 15 June 2021⁴ and the positive economic agenda of the Trade and Technology Council, as expressed in its Joint Statements of October 2021⁵, May 2022⁶, December 2022⁷ and May 2023⁸.

1.3. Consistency with other Union policies

The recommendation is consistent with other Union policies.

In its proposed Critical Raw Material Act of 16 March 2023⁹, the Commission sets out to enhance its cooperation with third countries by stimulating sustainable investments in critical raw material value chains and other components down the value chain and turning economic opportunities into mutually beneficial realities. The creation of strategic partnerships in raw materials value chains, such as via the CMA, is an important tool to enhance such cooperation.

This recommendation is consistent with the proposed Net Zero Industry Act¹⁰, which aims to scale up the EU manufacture of key carbon neutral or “net-zero” technologies to ensure secure, sustainable and competitive supply chains for clean energy in view of reaching the EU's climate and energy ambitions.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1. Legal basis

Article 218(3) and (4) of the Treaty on the Functioning of the European Union (TFEU).

2.2. Subsidiarity (for non-exclusive competence)

According to Article 5(3) of the TEU, the subsidiarity principle does not apply in areas of exclusive EU competence. The likely substantive legal basis of the agreement which will be the outcome of these negotiations is the common commercial policy, which is listed among the areas of exclusive competence of the Union in Article 3 TFEU. This policy includes the negotiation of trade agreements pursuant to Article 207 TFEU.

2.3. Proportionality

The Commission recommendation is in line with the principle of proportionality, and necessary in light of our objective to ensure EU-originating critical minerals and processed materials for electric vehicle batteries are not discriminated against by being considered to be originating from a “*country with which the United States has a free trade agreement in effect*” in the application of the Clean Vehicle Credit.

⁴ <https://www.consilium.europa.eu/media/50758/eu-us-summit-joint-statement-15-june-final-final.pdf>

⁵ https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_4951

⁶ https://ec.europa.eu/commission/presscorner/detail/en/statement_22_7516

⁷ https://ec.europa.eu/commission/presscorner/detail/en/statement_22_7516

⁸ https://ec.europa.eu/commission/presscorner/detail/en/statement_23_2992

⁹ Proposal for a regulation of the European Parliament and of the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials (“Critical Raw Material Act”)– see https://ec.europa.eu/commission/presscorner/detail/en/IP_23_1661

¹⁰ Proposal for a regulation of the European Parliament and of the Council establishing a framework of measures for strengthening Europe’s net-zero technology products manufacturing ecosystem (“Net Zero Industry Act”) – see https://single-market-economy.ec.europa.eu/publications/net-zero-industry-act_en

2.4. Choice of the instrument

Decision of the Council.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

3.1. Ex-post evaluations/fitness checks of existing legislation

Not applicable.

3.2. Ex-post evaluations/fitness checks of existing legislation

Not applicable.

3.3. Stakeholder consultations

Relevant stakeholder consultations have taken place about the possible gains from ensuring EU-originating critical minerals and processed materials are considered to be originating from a “*country with which the United States has a free trade agreement in effect*” in the application of the Clean Vehicle Credit. Several hearings and Civil Society Dialogue meetings have been organised. This is in addition to public debates in or organised by the European Parliament and in EU Member States.

3.4. Impact assessment

Due to the political imperative to move ahead quickly in order to diminish or avoid trade tensions between the EU and the US in the aftermath of the IRA, and in order to ensure that minerals extracted or processed in the EU would count for clean vehicle tax credits under the IRA and its implementation measures, the formal impact assessment process has been waived.

3.5. Fundamental rights

The recommendation is consistent with the EU Treaties and the Charter of Fundamental Rights of the European Union.

4. BUDGETARY IMPLICATIONS

The CMA will not have any budgetary implications for the Union.

5. OTHER ELEMENTS

5.1. Procedural aspects

The Commission will negotiate on behalf of the EU an agreement to be concluded between the EU and the US. In accordance with Article 218(4) TFEU, it is suggested that the Council designates the Trade Policy Committee as the committee in consultation with which the negotiations must be conducted.

The European Parliament will be informed at all stages of the procedure, in line with Article 218(10) TFEU.

The Commission will make this Recommendation and its Annex public immediately after its adoption.

The Commission recommends that the negotiating directives be made public immediately after their adoption by the Council.

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations of an agreement with the United States of America on strengthening international supply chains of critical minerals

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to open negotiations, on behalf of the European Union, with the United States of America for an agreement between the European Union and the United States of America on strengthening international supply chains of critical minerals.

Article 2

The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the Annex.

Article 3

The Commission shall conduct negotiations in consultation with [name of the special committee to be inserted by the Council].

Article 4

This Decision and its Annex will be made public immediately after their adoption.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President